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ARIZONA CORPORATION COMMISSION

96-98
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April 25, 2000

APR 26 2000

FCC MAIL ROOM

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Revised Petition of the Arizona Corporation Commission for Expedited
Temporary Waiver of the May 1, 2000 Effective Date of Section
51.507(f) Requiring Geographic Deaveraging of Unbundled
Network Element Rates

Dear Secretary Salas:

Enclosed herewith for filing with the Commission is an original and seven copies of the Revised Petition of the Arizona Corporation Commission for Expedited Temporary Waiver of the May 1, 2000 Effective Date of Section 51.507(f) Requiring Geographic Deaveraging of Unbundled Network Element Rates.

If you have any questions regarding this matter, please do not hesitate to contact me at (602) 542-6022.

Very truly yours.

A handwritten signature in black ink that reads "Maureen A. Scott".

Maureen A. Scott
Attorney, Legal Division

Before the
Federal Communications Commission
Washington, D.C. 20554

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APR 26 2000

FCC MAIL ROOM

In the Matter of)
Federal-State Joint Board on)
Universal Service)
Implementation of the)
Local Competition Provisions)
Of the Telecommunications Act)
Of 1996)
_____)

CC Docket No. 96-45

CC Docket No. 96-98

**Revised Petition of the Arizona Corporation Commission
For Expedited Temporary Waiver of the May 1, 2000 Effective
Date of Section 51.507(f) Requiring Geographic Deaveraging of
Unbundled Network Element Rates**

I. Introduction

Pursuant to 47 C.F.R. Section 1.3 of the Federal Communications Commission's ("FCC") rules and regulations, and paragraph 7 of the FCC's May 7, 1999 Stay Order¹, the Arizona Corporation Commission ("Arizona Commission" or "ACC") hereby petitions the FCC for expedited temporary waiver of the effective date of Section 51.507(f) which requires the establishment of at least three cost-related zones for unbundled network element ("UNE") rates. The Arizona Commission has commenced a proceeding to comply with this requirement, however, that proceeding will not be completed by May 1, 2000. The Arizona Commission, therefore, requests a temporary waiver of Section 51.507(f) until June 29, 2000, the day after this matter is expected to come before the ACC for a determination at its Open Meeting of June 27-28, 2000.

¹ See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deaveraged Rate Zones for Unbundled Network Elements*, CC Docket No. 96-98 (May 7, 1999) ("Stay Order").

II. Background

On August 8, 1996, the FCC adopted rules implementing Sections 251 and 252 of the Telecommunications Act of 1996 ("1996 Act")². 47 C.F.R. Section 51.507(f) requires state commissions to establish a minimum of three geographic rate zones for unbundled network elements and interconnection that reflect cost differences. The Eighth Circuit Court of Appeals subsequently stayed large portions of the FCC's rules, including Section 51.507(f), and on July 18, 1997, it vacated the rules on jurisdictional grounds.³ On January 25, 1999, the United States Supreme Court reversed the Eighth Circuit's jurisdictional holdings. As a result, the FCC rules that had been vacated on jurisdictional grounds, including Section 51.507(f), were subsequently reinstated.

On May 7, 1999, the FCC issued a *sua sponte* stay of the effectiveness of Section 51.507(f). "until six months after the Commission issues its order in CC Docket No. 96-45 finalizing and ordering implementation of high-cost universal service support for non-rural local exchange carriers (LECs) under section 254 of the Communication Act of 1934, as amended." *Id.* at para. 3. On November 2, 1999, the FCC issued its Ninth Report and Order and Eighteenth Order on Reconsideration in the Universal Service Docket⁴ in which it expressly lifted the stay of the deaveraging requirement effective May 1, 2000. *Id.* at paras. 119-120.

III. Discussion

The Arizona Commission requests a temporary waiver of Section 51.507(f) until June 29, 2000, to allow it to complete a proceeding now ongoing before it to establish UNE cost zones as required by the FCC's rules. The specific issue of geographic rate zones is the subject of examination in ACC Docket No. T-00000A-00-0194. *In the*

² See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Report and Order*, 11 FCC Rcd 15499 (1996) ("Local Competition First Report and Order").

³ *Iowa Utilities Board v. FCC*, 96 F.3d 1116 (8th Cir. 1996); *Iowa Utilities Board v. FCC*, 109 F.3d 418 (8th Cir. 1996) and *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997).

⁴ See *In the Matter of Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration*, CC Docket No. 96-45 (rel. November 2, 1999) ("Universal Service Order").

Matter of the Investigation into U S WEST Communications, Inc.'s Compliance with Certain Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts. In order to ensure expeditious compliance with Section 51.507(f), the Arizona Commission will in Phase I of this Investigation focus solely on the establishment of "interim" geographic deaveraged UNE rates and costing zones. The Phase I consolidated arbitration is scheduled to commence on May 11, 2000, with interested parties⁵ filing direct testimony on April 24, 2000 and responsive testimony on May 1, 2000. The Hearing Division will issue a recommended opinion and order and the ACC will then address the issue at its June 27 and 28 Open Meeting.

Later phases of the Investigation, in addition to establishing permanent geographic deaveraged UNE rates and costing zones, will examine other issues as determined by the Arizona Commission's Hearing Division. The ACC's Hearing Division has asked parties to file on or before April 21, 2000, recommendations for additional phases and the corresponding issues along with any deadlines that need to be met as a result of a specific legal requirement. Additional matters subject to review will likely include issues arising from: 1) the United States Supreme Court's decision in *AT&T v. Iowa Utilities Board*, 119 S.Ct. 721 (1999), 2) the Federal District Court for the District of Arizona's ruling remanding in part portions of the Arizona Commission's original arbitration decisions, *U S WEST v. Jennings*, 46 F.Supp.2d 1004 (D.Ariz. 1999), 3) the FCC's Third Report and Order in Docket No. 98-147⁶, 4) the FCC's Third Report and Order in Docket No. 96-98⁷ and, 5) the rates schedules contained in U S WEST's recently revised Statement of Generally Available Terms and Conditions.

⁵ Parties to this Investigation presently include U S WEST Communications, Inc., AT&T Communications of the Mountain States, Inc., MCI WorldCom, Sprint Communications, Rhythms Links, Inc., Electric Lightwave, Inc., New Edge Networks, Cox Arizona Telcom, Inc., e-spire Communications, the Residential Utility Consumers Office and ACC Staff.

⁶ *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability et al.*, CC Docket No. 98-147 et al., Third Report and Order (rel. December 9, 1999).

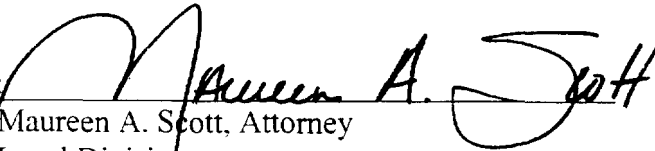
⁷ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order (rel. November 5, 1999).

A temporary waiver is necessary at this time to allow the ACC time to establish "interim" deaveraged UNE rates in Phase I on an expedited basis; and further to allow the ACC additional time in Phase II to more fully consider the complex and interrelated issues raised by the creation of wholesale cost zones, some of which were discussed by the FCC in its Stay Order. These issues include, *inter alia*, the impact of wholesale rate deaveraging upon: 1) universal service in rural areas and, 2) the traditional averaged rate pricing structure for affected retail services. The ACC has structured its process to achieve compliance as quickly as possible with no prejudice to any affected parties. In this regard the ACC's March 30, 2000 Procedural Order (Attachment A appended hereto) provides that the interim rates established in Phase I will be subject to true-up after permanent rates are established in a later phase of the Docket. The ACC was unable to complete its proceedings on this issue by May 1, 2000, due to the pendency of many other additional, significant dockets involving U S WEST and the creation of competitive telecommunications markets in Arizona.

IV. Conclusion

The Arizona Corporation Commission respectfully requests that the FCC grant it an expedited temporary waiver of 47 C.F.R. Section 51.507(f) until June 29, 2000, when the ACC is able to complete its proceedings establishing interim deaveraged UNE rates. No party is likely to be prejudiced from this limited waiver since the ACC has provided that the interim deaveraged UNE rates established by the ACC will be subject to true-up after permanent rates are set.

Respectfully submitted this 25th day of April, 2000.

By: A handwritten signature in black ink, appearing to read "Maureen A. Scott".

Maureen A. Scott, Attorney
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ATTORNEYS FOR THE
ARIZONA CORPORATION COMMISSION

ATTACHMENT A

BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER

IN THE MATTER OF INVESTIGATION INTO U S
WEST COMMUNICATIONS, INC.'S
COMPLIANCE WITH CERTAIN WHOLESALE
PRICING REQUIREMENTS FOR UNBUNDLED
NETWORK ELEMENTS AND RESALE
DISCOUNTS.

DOCKET NO. T-00000A-00-0194

PROCEDURAL ORDER

BY THE COMMISSION:

On January 28, 2000, the Arizona Corporation Commission ("Commission") Staff filed a Motion to Reopen Docket or Open a New Sub-Docket ("Motion"). On February 7, 2000, AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively, "AT&T") filed a Response to Staff's Motion. On February 8, 2000, Cox Arizona Telcom L.L.C. ("Cox") filed Comments on Staff's Motion. On February 14, 2000, U S WEST Communications, Inc. ("U S WEST") filed a Response to Staff's Motion. On February 15, 2000, MCI WorldCom, Inc. ("MCI") filed a Response to Staff's Motion. On February 18, 2000, Sprint Communications Company, L.P. ("Sprint") filed a Joinder in Comments of AT&T and MCI.

In its Motion, Staff requested the Commission to reopen this Docket or open a new sub-docket to examine issues raised as a result of: 1) the United States Supreme Court's decision in *AT&T v. Iowa Utils. Bd.*, 119 S.Ct. 721 (1999); 2) the District Court's decision on the Commission's arbitration order regarding the costs of resold retail and wholesale services, *U S WEST v. Jennings*, 46 F. Supp.2d 1004 (D.Ariz. 1999); and 3) the Federal Communications Commission's ("FCC") order lifting the FCC's previous stay of the FCC's rule requiring geographic deaveraging of wholesale rates and order requiring U S WEST to establish rates for line sharing.

AT&T, Cox, MCI, and Sprint all supported Staff's Motion. U S WEST also supported the Motion but did request a new docket be established.

1 A procedural conference was held on this matter on March 24, 2000. As a result, the above-
2 captioned new docket was opened.

3 Pursuant to the Telecommunications Act of 1996, A.C.C. R14-3-109(H) and A.A.C. R14-2-
4 1505 we hereby established the following procedural guidelines:

5 IT IS THEREFORE ORDERED consolidated arbitration proceedings shall be held on the
6 above-captioned matter in at least two phases.

7 IT IS FURTHER ORDERED that Phase I shall be a consolidated arbitration regarding interim
8 geographic deaveraging of wholesale rates.

9 IT IS FURTHER ORDERED that the Phase I arbitration shall commence on May 11, 2000 at
10 10:00 a.m. at the Commission's offices at 1200 West Washington Street, Phoenix, Arizona.

11 IT IS FURTHER ORDERED that the companies that filed comments⁸ to Staff's January 28,
12 2000 Motion are hereby designated as parties to this docket.

13 IT IS FURTHER ORDERED that additional requests for intervention shall be filed on or
14 before April 14, 2000.

15 IT IS FURTHER ORDERED that direct testimony on Phase I shall be filed by all parties by
16 4:00 p.m. on or before April 24, 2000.

17 IT IS FURTHER ORDERED that responsive testimony shall be filed by all parties by 4:00
18 p.m. on or before May 1, 2000.

19 IT IS FURTHER ORDERED that a pre-arbitration conference on Phase I shall be held
20 commencing at 1:00 p.m., on May 4, 2000, at the Commission's offices in Phoenix, Arizona.

21 IT IS FURTHER ORDERED that the arbitration proceeding on Phase I shall be held
22 commencing at 10:00 a.m. on May 11, 2000 at the Commission's offices in Phoenix, Arizona.

23 IT IS FURTHER ORDERED that interim rates are subject to a true-up after permanent rates
24 are established in an additional phase to this docket.

25 IT IS FURTHER ORDERED that the original and ten copies of any non-proprietary filings in
26 this proceeding shall be made with Docket Control, along with three copies of the filing to the
27

28 ⁸ As a result, U S WEST, AT&T, Cox, MCI, and Sprint are parties.

1 Arbitrator.

2 IT IS FURTHER ORDERED that any proprietary filings (an original and three copies) shall
3 be made with the Arbitrator with a non-proprietary summary (an original and ten copies) filed with
4 Docket Control.

5 IT IS FURTHER ORDERED that documents which contain mostly non-proprietary material
6 shall be filed with Docket Control, with the proprietary material redacted from the document, and
7 accompanied by a notice of filing proprietary material with respect to the omitted proprietary
8 portions.

9 IT IS FURTHER ORDERED that the proprietary documents, and proprietary portions of
10 documents, shall be stamped on each page with either "proprietary" or "confidential warnings, and
11 shall be provided on non-white paper, to clearly indicate the proprietary nature of the documents.

12 IT IS FURTHER ORDERED that all parties shall file on or before 4:00 p.m. on April 21,
13 2000, recommendations for additional phases and the corresponding issues along with any deadlines
14 that need to be met as a result of a specific legal requirement.

15 IT IS FURTHER ORDERED that all parties shall file responsive comments to the April 21,
16 2000 recommendations on or before 4:00 p.m. on May 5, 2000.

17 IT IS FURTHER ORDERED that a transcript shall be made of the consolidated arbitration
18 proceedings, with the costs to be borne equally by the parties.

19 IT IS FURTHER ORDERED that the Arbitrator(s) may rescind, alter, amend, or waive any
20 portion of this Procedural Order either by subsequent Procedural Order or by ruling at arbitration.

21 DATED this _____ day of March, 2000.

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23

24

JERRY L. RUDIBAUGH
CHIEF HEARING OFFICER

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26

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Copies of the foregoing mailed/delivered
this _____ day of March, 2000 to:

28

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10 By: _____
11 Debbi Person
12 Secretary to Jerry L. Rudibaugh
13
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